

From: [Aiofe](#)
To: [FOI](#)
Subject: Freedom of Information request - Veto powers of representatives of APS Commissioner
Date: Friday, 11 February 2022 11:32:52 PM

Dear Australian Public Service Commission,

This is a request for documents, which you may grant access to the documents by administrative release. Otherwise, please accept this email as a request for documents under the FOI Act.

I refer to an article published in the Australian on 10 February 2022 – Top judge warned of registrar overhaul.

In that article, the following is noted:

- a) “Mr Soden had claimed the registrar, a man who had been at the court for many years, could not be given the original Senior Executive Service classification advertised because it would be vetoed by the APSC representative”;
- b) “Warwick tells me there is a problem because the (APSC) has a veto on an SES appointments”;
- c) “... the most senior registrar in Queensland ended up in a position lower than the SES classifications other state registrars were given”;
- d) “To solve the problem, Warwick wants to downgrade the role from an SES position, avoid the APSC’s veto and appoint (him)”;
- e) “Warwick’s advice that the APSC has a veto on appointment is wrong”;
- f) “Justice Greenwood confirmed he had been told that the APSC had objected to the man’s appointment because he ‘might not be accommodating of planned changes to the management structure of the court’”; and
- g) “[The Registrar] was ultimately appointed to the role at the (lower level) configured by Mr Soden and Ms Lagos, no doubt in discussion with the APSC.”

There are certain things that are not entirely clear in the article. I would like to clarify certain comments and make the following requests to that end.

Request 1

I have reviewed the Public Service Act, the Public Service Regulations and the Australian Public Service Commissioner’s Directions 2016 (to account for the timing of the events) and have found nothing that suggests that the Australian Public Service Commissioner can veto SES appointments. Justice Greenwood of the Federal Court of Australia has stated that “Warwick’s advice that the APSC has a veto on appointment is wrong.”

I would like access to any documents that provide that the Australian Public Service Commissioner or the Commissioner's representative is permitted to veto SES appointments.

Request 2

I would like access to any document that provides that, when the Australian Public Service Commissioner, or the Commissioner's representative, participates in a selection process under section 21 of the Australian Public Service Commissioner's Directions 2016, the Commissioner or the representative has a power of veto in relation to the selection process (including over any decisions of the other selection committee members).

Request 3

I would like access to the certification issued by the Australian Public Service Commissioner's representative noting that the selection process complied with the Public Service Act 1999 and the Australian Public Service Commissioner's Directions 2016: see Australian Public Service Commissioner's Directions 2016, s 21(b).

If, and only if, the certification has not been maintained by the Australian Public Service Commission, I would like access to any correspondence between the Australian Public Service Commissioner, or members of his staff, and the representative noting arrangements for the representative to represent the Commissioner during the selection process for the "most senior registrar in Queensland" (the article is not entirely clear on what the relevant position title is, although it would appear to be National Judicial Registrar).

Please provide the documents in digital format (e.g. PDF or Microsoft Word).

Yours faithfully,

Aiofe

Please use this email address for all replies to this request:

xxxxxxxxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxx.xxx.xx

Is xxx@xxxx.xxx.xx the wrong address for Freedom of Information requests to Australian Public Service Commission? If so, please contact us using this form:

https://www.righttoknow.org.au/change_request/new?body=apsc

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:

<https://www.righttoknow.org.au/help/officers>

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.



Australian Government
Australian Public Service Commission

Aiofe

By email: foi+request-8408-576d04d8@righttoknow.org.au

Our reference: SHC22-1386

Dear Aiofe

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on 11 February 2022 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to multiple documents related to the Commission in three (3) parts. Your full request is enclosed in this correspondence at **Attachment D**.

Decision

4. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
5. For each part of your request I have decided:

Request 1	All reasonable steps have been taken to find any document relevant to Part 1 of your request. I am satisfied that the documents do not exist because I am unable to identify a ‘veto power’ as described for SES recruitment in the <i>Australian Public Service Commissioner Directions 2016</i> . I refuse Part 1 of your request under section 24A of the FOI Act.
Request 2	All reasonable steps have been taken to find any document relevant to Part 2 of your request. I am satisfied that the documents do not exist because I am unable to identify a ‘veto power’ as described for SES recruitment in the <i>Australian Public Service Commissioner Directions 2016</i> . I refuse Part 2 of your request under section 24A of the FOI Act.
Request 3	To grant you access in part to one document identified.

6. Prior to 1 February 2019, certificates issued pursuant to paragraph 21(b) of the *Australian Public Service Commissioner's Directions 2016* were maintained by the recruiting entity and not provided to the Commission.

Deletion of exempt matter or irrelevant material

7. Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of a request.
8. A copy of the document has been edited to remove material that is either exempt or irrelevant material to the scope of your request.
9. The schedule at **Attachment A** sets out the grounds on which information has been redacted from the documents. My reasons are set out in **Attachment B**.

Contacts

10. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au.

Review rights

11. You are entitled to seek review of this decision. Your review rights are set out at **Attachment C**.

Yours sincerely



Giordina Strangio

Authorised FOI decision maker

3 March 2022

ATTACHMENT A

SCHEDULE OF DOCUMENTS

Document	Description	Basis of redaction
1	Email correspondence between representatives of the Federal Court of Australia and the Commission dated 22 June 2018	Sections 22 and 47F of the FOI Act apply

Reasons for decision

1. I have decided to refuse access to parts of document because I have determined it is exempt from the operation of the FOI Act or irrelevant material to the scope of your request.
2. In making my decision I have had regard to:
 - the terms of your request;
 - the content of the document;
 - the relevant provisions of the FOI Act; and
 - FOI guidelines issued by the Australian Information Commissioner and published on the Office of the Australian Information Commissioner (the OAIC) website.

Section 47F – personal information

3. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.
4. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether:
 - the information or opinion is true or not; and
 - the information or opinion is recorded in a material form or not.
5. I consider the document contains personal information of public servants.
6. I have had regard to the matters I must consider under subsection 47F(2) of the FOI Act in determining whether the disclosure of the document would involve the unreasonable disclosure of personal information.
7. Relevant to personal information of public servants, under the FOI Act there is no presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and the objects of the FOI Act: *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 at [83].
8. With the substantial increase in electronic requests and related correspondence, a rise in anonymous applications as well as requests affecting the safety and wellbeing of employees, the Commission now assesses whether a disclosure of public servants' personal information in requests is unreasonable under section 47F of the FOI Act.
9. I have identified the following factors that, in my view, do not support release of certain public servants' personal information under section 47F of the FOI Act:
 - the individuals' personal information, in particular their names, will or may identify them;
 - the names and contact details are generally not well known or publicly available;
 - the disclosure of this information will not advance scrutiny of any decisions falling within the scope of your FOI request, particularly with regard to staff who are not

- relevant decision-makers and non-SES staff members who are acting under the direction of senior staff within relevant agencies in the course of their ordinary duties;
 - the release of some of the individuals' personal information may cause stress for them or other detriment; and
 - no public purpose or interest in increasing transparency of government would be achieved through the release of the information.
10. Considering the above factors, I have decided that to the extent the document includes personal information about non-SES staff members, those parts of the document are conditionally exempt from disclosure under section 47F of the FOI Act.

Section 11A – public interest test

11. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access to the document would, on balance, be contrary to the public interest.
12. I have considered the public interest exemption factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the document would promote the objects of the FOI Act.
13. I have identified the following factors as weighing against disclosure:
- disclosure of certain personal information (including contact details) will not advance any scrutiny of any decisions falling within the scope of your FOI request;
 - disclosure of personal information could reasonably be expected to prejudice the protection of the individuals' right to privacy;
 - there is a public interest in APS employers fulfilling their obligations under the *Work Health and Safety Act 2011*, in particular by preventing the exposure of staff members from potential harassment or threats in a public forum; and
 - disclosure may undermine the Commission's relationship with agencies and third party individuals, and would do little to enhance scrutiny of government decisions.
14. Subsection 11B(4) of the FOI Act lists factors that are irrelevant to determining whether access would be in the public interest. I have not considered these factors.
15. On balance, I find disclosure of some parts of the document would be contrary to the public interest. To the extent the material contained in the document is conditionally exempt under 47F of the FOI Act, those parts are exempt from disclosure. An edited version of the document is therefore provide pursuant to section 22 of the FOI Act.

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au

Post: The FOI Officer
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

From: [APSC - Staffing Policy](#)
To: [Recruitment](#)
Cc: [REDACTED]
Subject: RE: SES Commissioner's Representative [SEC=UNCLASSIFIED]
Date: Friday, 22 June 2018 1:29:27 PM

UNCLASSIFIED

Good afternoon [REDACTED]

Our First Assistant Commissioner, Kerryn Vine-Camp, has advised that she is able to participate as the Commissioner's representative on this selection process. Her Executive Assistant is [REDACTED], who can be contacted on the following details:

[REDACTED]
[REDACTED]

Ms Vine-Camp would appreciate it if you could arrange for the necessary materials to be sent ASAP.

Kind regards

[REDACTED]
Staffing Policy
Employment Policy Group
Australian Public Service Commission
Level 4, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176, CANBERRA ACT 2601
W: www.apsc.gov.au

From: Recruitment
Sent: Thursday, 21 June 2018 13:53
Cc: [REDACTED]
Subject: SES Commissioner's Representative
Importance: High

UNCLASSIFIED

Good afternoon,

Subject to approval from the Commissioner, the Court is urgently looking for an SES 2 who can assist as Commissioners Rep for some recent SES 1 & 2 advertising we undertook. The schedule of the interviews is as below. The panel are happy for the rep to be there in person (and would cover all costs) or by videolink/phone, or a mixture.

Please let me know as soon as possible (preferable by COB tomorrow) if there are any SES 2's at your agency who can assist. It is preferable that the one SES 2 does all SES interviews as some interviews cover both an SES 1 and an SES 2 role.

Date	Time	Location of Interview	Roles interviewing for	Commissioners Representative required
Wednesday, 27 June 2018	10.00am – 4.00pm	Melbourne	Senior National Judicial Registrar (SES2)	Yes
Thursday, 28 June 2018	9.30am – 12.30pm	Melbourne	National Judicial Registrar & District Registrar – VIC (SES1)	Yes
Monday, 2 July 2018	10.00am – 5.00pm	Sydney	Senior National Judicial Registrar (SES2) National Judicial Registrar & District Registrar – QLD (SES1) (candidate based in NSW for QLD role)	Yes
Wednesday, 1 August 2018	3.00pm – 5.00pm	Brisbane	National Judicial Registrar – Native Title (SES1)	Yes
Thursday, 2 August 2018	9.00am – 3.00pm	Brisbane	Senior National Judicial Registrar (SES2) / National Judicial Registrar & District Registrar – QLD (SES1)	Yes
Wednesday, 8 August 2018	9.00am – 4.00pm	Perth	Senior National Judicial Registrar (SES2) / National Judicial Registrar & District Registrar – WA (SES1)	Yes
Thursday, 9 August 2018	9.00am – 11.00am	Perth	National Judicial Registrar – Native Title (SES1)	Yes

Regards

[REDACTED]
Corporate Services | Federal Court of Australia
Level 1, 43 Burelli Street, Wollongong NSW 2500
[REDACTED]
www.fedcourt.gov.au